IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR
ORDER
S.B. Civil Writ Petition No.486/1982
Mod Singh & Ors.
Vs.
State of Raj. & Ors.

Date of Order :: 27th July, 2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri K.K. Mehrishi, Senior Advocate with
Shri Sanjay Mehrishi for petitioners.
Shri B.L. Awasthi, Addl. Government Advocate for State.

REPORTABLE

The petitioners have challenged the judgment dated 1.12.1979 passed by Authorised Officer, Kota whereby part of their grievances were remedied under the provisions of Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (for short - the Act of 1973) and the Rajasthan Imposition of Ceiling on Agricultural Holdings Rules of 1973 (for short- the Rules of 1973). The petitioners

have also challenged the subsequent judgment dated 31.5.1979 passed by Additional Collector, Kota and that of the Board of Revenue dated 2.9.1981 whereby their successive appeals against the judgment of the Authorised Officer, Kota were dismissed. A consequential declaration has been prayed for that the lands of the petitioners' khatedari are not liable to be acquired under the Act of 1973 and that the petitioners are entitled to get the intensity of the irrigation worked out field wise in accordance with the provisions of the Rules of 1973 and that the unirrigated lands of the petitioners should not be treated as irrigated lands and ceiling area of the petitioners for the purpose of Section 4(1)(d) of the Act of 1973 should be accordingly worked out by not taking the intensity of the irrigation for the Command

Area as a whole.

Factual matrix of the case is that petitioners' father Birdhi Lal inherited 600 bighas and 13 biswas of the agricultural land from his father Bal Kishan. This land was situated in Village Bhonra, Tehsil Digod, District Kota and was mutated in the name of Birdhi Lal as the Manager and Karta of the Joint Hindu Family after the death of his father. Proceedings for partition of the lands were initiated at the instance of the members of the Joint Hindu Family, pursuant to which a decree for divison of holdings was passed by the Sub-Divisional Officer, Kota on 21.8.1957 and separate area of land fell into the share of nine different members of the family, out of which 82 bighas and 4 biswas came to the share of Birdhi Lal and 30 bighas and 3 biswas of land was also left out in the sole khatedari

of Birdhi Lal. After the aforesaid judgment and decree, total land held by him was 112 bighas and 7 biswas. In the meantime, the Act of 1973 passed by the State Legislature received the assent of the President on 28th May, 1973 and was published in the Gazette on 29.3.1973. It was brought into force from 1st January, 1973 in the whole of the State of Rajasthan except the area of Rajasthan Canal Project where it came into force w.e.f. 6th of April, 1973 and thereafter Rules of 1973 were framed. Section 10 of the Act of 1973 provided that every person who, on the date of commencement of the said Act, was holding land in excess of ceiling area applicable to him, was required within 120 days from the date of commencement of the said Act to furnish to the Authorised Officer, within whose jurisdiction the holding of such person or the major part

thereof was situated, a return in such form and containing such particulars as were prescribed. Section 11(1) of the Act of 1973 empowers the Authorised Officer to require such person, who holds land in excess of ceiling area applicable to him, but who has failed to furnish the return under Section 10 or furnish particulars as the case may be, within the time specified in the notice or within such further time, not exceeding 30 days as the Autborised Officer may, in his discretion, allow. Sub-section 2 of Section 11 of the Act of 1973 further empowers the Authorised Officer to obtain necessary information in case of a person who fails to furnish the return or the additional particulars, as the case may be, in such manner as he thinks fit either by himself or through any other agency.

The Authorised Officer, Kota upon

receiving report of the Patwari of Village Dhaba served notices on the petitioners and their mother Smt. Dhapu Bai and their brother Vikram Singh under Section 11 of the Act of 1973 requiring them to furnish the returns of their holdings and the particulars of their families. The petitioners and their brother Shri Vikram Singh submitted returns of their holdings as also the particulars of their families accordingly, which was sent to the Tehsildar Digod for scrutiny. The Authorised Officer, Kota after receiving report of the Tehsildar, Digod served a joint draft statement under Section 12 of the Act of 1973 on the petitioners. The petitioners thereupon submitted their reply to the Authorised Officer along with certified copy of the judgment and decree of the SDO, Kota dated 21.8.1957 mentioning therein the lands

held by them and the other members of the family in their khatedari and particulars of the family members. It was submitted that as a result of the aforesaid judgment and decree only 80 bighas and 19 biswas of land came to the share of petitioner Mod Singh, 67 bighas and 3 biswas of land came to the share of petitioner Lekhraj Singh and 74 bighas and 9 biswas of land to the share of petitioner Dalpat Singh. Lands which came in the share of Birdhi Lal, Smt. Dhapu Bai, Smt. Lad Kanwar Bai and Smt. Kushal Kanwar Bai were also mentioned in the reply. It was stated in the reply that 16 bighas and 10 biswas of the land out of the aforesaid lands were acquired for the purpose of digging canal of which compensation was also received by the petitioners and other members of their family and therefore that land was to be excluded while computing the

ceiling area. It was also stated that out of the lands held by the petitioners and their other relations, 10 bighas of land of the khatedari of Smt. Dhapu Bai, 40 bighas of land of the khatedari of Dalpat Singh, 22 bighas of land of the khatedari of Mod Singh, 15 bighas of land of the khatedari of Smt. Lad Kanwar Bai and 5 bighas of land of the khatedari of Smt. Kushal Kanwar Bai, totaling to 92 bighas of land, was irrigated by canal and remaining lands held by the petitioners and other family members were unirrigated. Each of the petitioners should therefore be allowed to retain at the rate of 48 acres of land in each unit out of the aforesaid unirrigated lands which should be treated as falling in the fertile zone. As regards the lands irrigated by canal, it was submitted that looking to the intensity of the irrigation only 75% of the land was

irrigated for one crop. It was submitted that father of the petitioners Birdhi Lal had died on 5.1.1963 and 112 bighas and 7 biswas of land held by him in his khatedari had devolved in equal shares upon his 10 legal heirs and thereby each of them got 11 bighas and 4 biswas of land. It was therefore prayed that the lands held by the petitioners and their relations were within the ceiling limit prescribed and as such the proceedings against them should be dropped.

The Authorised Officer, Kota after hearing the parties, by his common judgment dated 20.1.1976 decided the matter by holding that the lands held by Birdhi Lal measuring 112 bighas and 7 biswas had devolved on the petitioners, their mother Smt. Dhapu Bai and their brother Shri Vikram Singh and the daughters of Birdhi Lal were not entitled to succeed to the agricultural

lands held by him and on that basis the Authorised Officer calculated the lands held by the petitioners, Smt. Dhapu Bai and Shri Vikram Singh. The Authorised Officer further held that the lands held by the petitioners and their relations were situated in Chambal Command Area and therefore calculation of the ceiling area was to be made in accordance with Rule 5(3)(a) of the Rules of 1973. The Authorised Officer, Kota was of the view that the intensity of irrigation available to the lands was 79% and therefore each unit was entitled to retain equal to 30.17 acres of the land and thus allowed the petitioners, Smt. Dhapu Bai and Shri Vikram Singh to retain 30.17 acres of land each and declaring all of them except Vikram Singh, holding surplus land and directed for preparation of the final statement accordingly. Aggrieved thereby, the

petitioners, Dhapu Bai and Vikram Singh filed an appeal before the Court of Additional Collector, Kota who by his judgment dated 3.5.1976 accepted the appeal and remanded the matter to the Authorised Officer, Kota. The Additional Collector, Kota by his judgment dated 3.5.1976 held that 112 bighas and 7 biswas of land held by Shri Birdhi Lal, had after his death devolved upon his widow, sons and daughters equally and 22 bighas and 13 biswas of land had been acquired. He further held that report of the Patwari and the Zilledar dated 30.11.1975 revealed that khasra Nos.402, 261, 168, 163, 177, 231, 411 and 253 were uncommand and were not irrigated and as such the enquiry should be made whether the above khasra Nos. were irrigated from the canal or not and that the ceiling area of the petitioners should be determined in

accordance with Section 4 of the Act of 1973. It was with these directions that while remanding the matter to Authorised Officer, the Additional Collector directed the parties to appear before the Authorised Officer on 20.5.1976.

The matter was examined again by the Authorised Officer, Kota in the light of the aforesaid directions given by the Additional Collector. The petitioners produced their evidence and also recorded the statements of Shri Banwari Lal, Zilledar and Shri Ram Kalyan Sharma, Patwari of the Irrigation Department, Kota and proved by their testimony the report Ex.P-1. On conclusion of the evidence and hearing the arguments, the Authorised Officer, Kota by his judgment dated 1.12.1977 dropped the proceedings against Smt. Dhapu Bai and Shri Vikram Singh and declared 5.73 acres of land of

petitioner Mod Singh's khatedari, 8.13 acres of land of petitioner Manohar Singh's khatedari, 0.13 acres land of petitioner Lekhraj Singh's khadeari and 3.13 acres of land of petitioner Dalpat Singh's khatedari as surplus. He further held that entire lands held by the petitioners in their khatedari were liable to be treated as irrigated as they were situated in Chambal Command Area and on that basis the Authorised Officer allowed each of the petitioners to retain only 30.17 acres of land.

Aggrieved by the judgment of the Authorised Officer dated 1.12.1977, the petitioners again filed appeal before the Additional Collector (CAD), Kota who vide his judgment dated 31.5.1979 dismissed the same. The petitioners further filed second appeal before the Board of Revenue which

also vide its judgment dated 2.9.1981 dismissed the appeal by treating the lands held by the petitioners as irrigated on the assumption that all such lands were situated in the Chambal Command Area and therefore irrigated. It is against this backdrop that the petitioners have approached this Court by filing the present writ petition with the prayers extracted above.

This writ petition was earlier dismissed by vide judgment dated 23.5.96. The petitioners challenged the said judgment in D.B. Civil Special Appeal (W) No.968/96 on the premise that a binding division bench judgment of this Court in Ram Pratap & Ors. Vs. State of Raj. & Ors., supra, was not considered by learned Single Judge and it was sought to be distinguished merely mentioning that no assistance could be taken by the ratio indicated in that judgment

though no discussion was made. On that note, the division bench allowed the appeal and remanded the writ petition back to the Single bench for deciding it afresh by judgment dated 22.2.2007.

I have heard Shri K.K. Mehrishi, the learned Senior Advocate for the petitioners and Shri B.L. Awasthi, learned Additional Government Advocate for the State.

Shri K.K. Mehrishi, the learned Senior Advocate for the petitioners argued that the authorities have erred in law in not appreciating that merely because the lands of the petitioners fell within the command area of the Chambal Irrigation Project, did not mean that entire lands were irrigated. Only 62 bighas of lands were actually irrigated and remaining lands were unirrigated. The Board of Revenue has erred in holding that in the case of Chambal

Command Area, the intensity of irrigation should be considered as a whole and not on a village wise or field wise basis. It has been the consistent view of this Court that merely because a canal passes through one's land is not a proof of the fact that the land is `nahari' or is irrigated. So this question will have to be determined by referring to the given classification of the land. Irrigation largely depends on levels and if land is at a higher level than the level of the outlet of the canal irritating surrounding areas, it would be not possible to irrigate the land by gravity. The Board completely ignored this aspect of the matter. The authorities below also ignored the report of the Patwari and Zilledar to the effect that as per the records khasra numbers mentioned in the report and forming part of petitioners holdings could not be

provided with water for irrigation. This report was proved by none other than Shri Banwari Lal, Ziledar and Shri Ram Kalyan, Patwari in evidence. It was therefore imperative for the authorities below to ignore those lands from the command area. The learned Court below also did not take notice of the fact that only 22 bighas of land of petitioner Mod Singh and 40 bighas of land of Dalpat Singh were irrigated and failed to appreciate that there is no possibility of irrigation of the lands, other than 62 bighas referred to above, from the canal as their level is higher than the FSL of the canal. The Courts below should have therefore treated them as unirrigated lands as situated in Fertile Zone and should have allowed each of the petitioners to retail 48 acres of land instead of only 30.17 hectares. It was argued that Board has

totally ignored the provisions of the Act of 1973 according to which it is obligatory on the part of the Authorised Officer to determine the question whether any land is assured of irrigation from Government or private source and is capable of growing two crops or one crop in a year in the prescribed manner. The procedure for determining whether any land is assured of irrigation or not as laid down in Rule 5(3) of the Rules of 1973 was also ignored. According to this procedure, the Authorised Officer, on receiving Tehsildar's report and after such further enquiry as he may deem fit to make from the Irrigation Department and other sources, should determine the question whether any land is assured of irrigation and is capable of growing two crops or one crop in a year. In so far as lands falling in the command area of a major

irrigation project is concerned, this question is to be decided on the basis of the extent of the intensity of irrigation available to the land in the year immediately preceding the year in which such question has to be decided. The lands to the extent of irrigation intensity shall be deemed to be the lands capable of growing, two crops or one crop, as the case may be, and the rest of the lands shall be deemed to be dry land. It was argued that as per the law intensity of irrigation has to be worked out field wise and it cannot be the intensity available to the entire command area as a whole. The courts below however erred in law in presuming the command area as a whole was irrigated on the basis of intensity available to it. They did not take note of the fact that Rule 5(3) of the Rules of 1973 envisages a calculation on the basis

of actual irrigation of fields and not on the basis of the intensity available to the whole of the command area. The land even though falling within the command area but if not irrigated is to be treated as barani for calculation purposes as per Rule 5(3) of the Rules 1973. The Autorised Officer has arbitrarily held that intensity of irrigation in Chambal Command area was 78%. Calculation of the land allowable to the petitioners on that basis was illegal and erroneous. Shri K.K. Mehrishi, Senior Advocate for the petitioners relied on the judgments in Madan Lal Vs. State of Raj. & Anr. decided by this Court on 29.5.2006, Ram Pratap & Ors. Vs. State of Raj. & Ors., RLR 1988 (2) 520, Ishwari Singh Vs. State of Raj., RRD 1986 93 & Mst. Ram Kanwari Vs State of Raj., RRD 1985 143.

Shri B.L. Awasthi, the learned

Additional Government Advocate opposed the writ petition and argued that the judgments passed by the Authorised Officer, Additional Collector and Board of Revenue are perfectly legal and valid and do not suffer from any such error or illegality as may warrant interference by this Court. It was argued that the Board of Revenue held that the Authorised Officer after fresh examination of the matter found that the whole of the land forms part of Chambal Command Area and thus came under the major irrigation project. It was therefore held that intensity of irrigation for such land should be considered as a whole and not village wise or field wise. Findings recorded by the Board of Revenue as also the Courts below were based on the factual aspect, correctness of which cannot be doubted. It was rightly held by the Authorised Officer

that intensity of the irrigation will be looked into only by Rule 5(3) of the Rules of 1973. A land which is capable of single crop or assured irrigation has to be held to have the intensity of 78%. The Authorised Officer considered the statements of the witnesses and came to the conclusion that as per the record khasra numbers mentioned in the report of the Patwari / Zilledar, it was proved that the lands were not provided for the purpose of irrigation at the relevant time and therefore the learned Authorised Officer is justified in taking all lands as irrigated. The Authorised Officer also considered the report of the Tehsildar as well as other evidence and directly held that the land in question was having assured irrigation and was capable of yielding at least single crop in a year. This was decided on the basis of situation of the

land which falls under the command area. It was argued that for computation of ceiling area in ceiling proceedings, the land has to be converted into standard acres from ordinary acres. The standard acres has been defined as a land with reference to its productivity, capacity, situation, soil classification and other prescribed particulars as found in prescribed manner to be likely to yield ten mounds of wheat yearly in determining the ceiling area in terms of stand acre the money value of produce of well irrigated chahi land is equivalent to money value of the produce of an equal area of unirrigated land. Under Rule 19 of the Rajasthan Ceiling Rules, the formation of the ceiling groups has been provided and the ceiling groups deemed to have been formed under Section 149 of the Rajasthan Land Revenue Act. It was argued

that ceiling groups should be formed as per Annexure-1 to the Rules in respect of various soil classes as mentioned in column 2 of Part-A. Annexure -1 Part A provides for formation of group and in Part-B the name of the villages along with ceiling groups in which it lies have been provided. In the Gazette notification dated 1.12.1963 a list of villages along with ceiling groups in which it lies has been notified for information. After publication of the list of villages by notification as provided under Section 5 of the Rajasthan Irrigation and Drainage Act, 1954 which is the date from which the water has been provided to the lands falling within that area for the purpose of irrigation. A presumption has to therefore arise that the land being part of the command area was irrigated by canal water. No separate notification need be

issued under Section 5, supra, for part of the lands falling in that area including those of the petitioners because the notification has clearly given the classification of the land at S.No.1 covering of such canal lands falling under Chambal Project. It was therefore argued that the land in dispute actually coming under Chambal Project was irrigated land and therefore it has been rightly classified as Nahari. It was argued that the decision of the division bench of this Court in Ram Pratap, supra, is of no help to the petitioners because in that case notification with regard to villages along with its ceiling groups was not produced before the Court. It was not brought to the notice of the Court that the land was being irrigated by canal water even prior to the appointed date i.e. 1.4.1966. Under these

circumstances, the division bench judgment is distinguishable and cannot be applied to the facts of the present case. It was argued that intensity of irrigation is question of fact and this question having been correctly decided by all the three courts below is not open to challenge in writ jurisdiction before this Court. Even the Board of Revenue was not required to interfere into this question while deciding the second appeal. It was therefore prayed that the writ petition be dismissed.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the material on record.

This writ petition was infact earlier decided and has been remanded on the note that the biding decision of the division bench in Ram Pratap & Ors, supra, even

though mentioned in the earlier judgment, its effect has not been correctly analysed. I shall therefore begin with noticing the ratio of that division bench judgment.

In Ram Pratap, supra, the division bench on consideration of the relevant provisions of Rule 12A of Rajasthan Tenancy (Fixation of Ceiling on Land) (Government) Rules, 1963 and Section 30C of Chapter-III-B of the Old Ceiling Law noted that ceiling area for a family consisting of 5 or less than 5 persons shall be 30 standard acres which shall be calculated as per soil classification of agricultural land and for determining of the Old Ceiling Law. According to Index of Annexure-1 under the Rules of 1963, supra, each District has been considered as a unit and each circle or group as a sub unit. The division bench on consideration of the scope of Rule 12 of the

Rules of 1963 held that standard acres were to be computed on the basis of soil classification of land which existed on the date of framing of the rules and the standard acres were to be computed on the basis of soil class of land as recorded in the revenue records available on the appointed date i.e. 1.4.1966 only by making an enquiry on that basis in accordance with provisions of Rule 12, supra. In that background, the division bench on consideration of Section 5 of the Rajasthan Irrigation and Drainage Act, 1954 in para 19 of the report held that Section 5 of the Rajasthan Irrigation and Drainage Act envisages that a notification has to be issued by the State Government for declaration that the water of any river or stream flowing in a natural channel, or of any lake or other natural collection of

still water, should be applied or used by the State Government for the purpose of any executed or projected irrigation or drainage work and that in the case before the division bench, no such notification was issued. In view of this, it was held that petitioner in that case can claim calculation of their land as per soil classification mentioned in the annual register on the appointed date. A somewhat similar question cropped up before the co-ordinate bench of this Court in Madan Lal, supra. Grievance was raised in that case too that the Additional Collector as well as Board of Revenue did not disclose the basis of calculation of ceiling area and that there was no finding to the effect that the land was capable of growing two crops in an year which was equivalent to land capable of growing one crop in a year as claimed by

Rule 4A and 5 of the New Ceiling Rules of 1973.

Under the relevant Rule 4A , the State Government has to constitute a committee for each Tehsil to perform the functions assigning by the Government. A notification constituting such committee has to be issued under the aforesaid provision. After the return is filed under Section 10 or 11 of the New Ceiling Rules, the Authorised Officer has to forward a copy of the same to Tehsildar concerned for verification of the correctness of the particulars and especially about the fact that the land was under assured irrigation and capable of growing two crops in a year. The Tehsildar upon verification of all these facts has to submit his report to the committee aforesaid. Committee in turn can upon examination of material before it shall hold

an enquiry as it may consider necessary and thereafter send his report to the Authorised Officer. The Authorised Officer has further been empowered to make an enquiry, if deemed necessary, to determine the question whether any land is assured of irrigation from government or private source capable of growing two crops or one crop in a year, in the manner as provided in sub-rule 5(3)(a) of the Rules of 1973. Whether or not the land is assured of irrigation or capable of growing two crops or the crop in a year will depend on the enquiry so conducted. On the material that has been placed on record, even from the arguments of learned counsel for respondents and contents of their reply, no enquiry appears to have been conducted by the Tehsildar, nor even by the committee in the rules. The respondents have proceeded merely on the premise that since the land in

question fall within the Chambal Command Area which has an average 78% intensity of irrigation and on that basis, the respondents have proceeded to accept all the lands falling within the Chambal Command Area as irrigated having assured irrigation and capable of yielding atleast one crop in a year. The respondents have thus proceeded on an assumption that just because the land in question is situated within the Chambal Command Area that would necessarily have irrigation. The respondents have not given any direct or specific denial of the plea set up by the petitioner that out of his land, only 92 bighas is irrigated and remaining land even though falling within the broad Chambal Command Area were not irrigated because it was located at a higher level, than the outlet of the canal and by reason of gravity, the water of canal could

not reach such land for irrigation. Though the learned Additional Government Advocate submits that this is a question of fact. But then even when a question of fact has been decided by a sub-ordinate court or tribunal by applying wrong principles or parameters of law, it is bound to result in returning an erroneous finding on that question of fact. When the relevant provisions discussed above have provided for a specific mechanism in arriving at a conclusion as to what is the intensity of irrigation for the purpose of calculating the standard acres, the respondents cannot proceed to decide the question by taking overall average intensity of the irrigated land in Chambal Command Area. While it may be true that the average intensity of irrigation in whole of the Chambal Command Area may be 78%, but on that basis it cannot be said that intensity of

irrigation for entire land within the Chambal Command Area would be 78% regardless of the fact its level may vary from the level of irrigating canal which at certain places may not match the level of land. No general presumption therefore can be raised that all lands falling within the Chambal Command Area would be Nahari or irrigated. This therefore being a question of fact cannot be determined without an appropriate enquiry and obtaining relevant material on that basis. In fact, contention of the petitioner has been that the report of Zilledar and Patwari proved to the contrary that the lands in question were not having irrigation from any source. Both of them when were produced before the competent authority, he supported contents of such reports.

Ceiling Area under the new law has to be

determined and thereafter it has to be examined in the light of second proviso to sub-section (1) of Section-4 of the New Ceiling Law as to what shall be the ceiling area if the same is worked out under Chapter-III B of the Act of 1955. Such ceiling area as may be found beneficial to the State shall have to be preferred for determination. In the present case, in the absence of any cogent and reliable evidence about the intensity of the irrigation, it cannot be held as to what is the extent ceiling area in the New Ceiling Law and therefore it cannot be held that the ceiling area under the New Ceiling Law would be more beneficial to the government than the Ceiling Area under the Old Ceiling Law.

In the result the writ petition is allowed and the order dated 1.12.1979 passed by the Authorised Officer, Kota, order dated

31.5.1979 passed by Additional Collector, Kota and order dated 2.9.1981 passed by the Board of Revenue are set aside and the matter is remanded back to the Authorised Officer to undertake fresh exercise for determination of the ceiling area as per Rule 4A and 5 of the Rules of 1973 in the light of discussion made above within a period of six months from the date certified copy of the judgment is produced before him.

(Mohammad Rafiq),J.

RS/-